



# United States Department of the Interior

OFFICE OF SURFACE MINING  
RECLAMATION AND ENFORCEMENT  
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ALBUQUERQUE, NEW MEXICO 87102

April 19, 1991

CERTIFIED MAIL-RETURN RECEIPT REQUESTED  
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APR 22 1991

DIVISION OF  
OIL GAS & MINING

Dr. Dianne R. Nielson, Director  
Division of Oil, Gas and Mining  
Department of Natural Resources  
3 Triad Center, Suite 350  
355 West North Temple  
Salt Lake City, UT 84180-1203

Re: Ten-Day Notice (TDN) 91-02-246-2 TV2, Crandall Canyon Mine

Dear Dr. Nielson:

In accordance with 30 CFR 842.11, the following is a written finding regarding the Division of Oil, Gas and Mining's (DOGM) response to the above-noted TDN.

DOGM's response to the TDN was timely. The TDN contains two violations as follows:

Number 1 of 2:

Failure to obtain a permit from the Utah - DOGM prior to engaging in and carrying out coal mining and reclamation operations.

DOGM's response:

"Maintenance, physical and environmental performance standards and performance bonds are dictated by Manati La Sal to ensure compliance with the USDA's requirements."

I agree that the Forest Service is the land management agency that has certain standards by which the lessee must adhere. However, those standards are not the SMCRA standards that are incorporated in DOGM's program. All coal mining permittees should adhere to lease agreements with the landowner (in this case a Federal land management agency), but they must also comply with Utah's approved State program. Regarding the special use permit with the Forest Service, during the inspection on March 20, 1991, the permittee was not complying with the permit. For example, the permittee was not maintaining a 4 to 6 inch "Snow Floor" on the road bed and was hauling coal on the road when temperatures allowed

10/15/032

signature  
ce L. Braxton  
J. Hefner  
TAKE  
PRIDE IN  
AMERICA  
T. Mitchell  
In Reply Refer To:  
R. Daniels  
RLH

the road surface to thaw and rut, which is precluded by the USDA permit. More importantly, the environmental harm resulting from the haul road not being permitted is typified in Violation No. 2 of this TDN.

DOGM's response:

"To test the applicability of this road under Utah's emergency rulemaking definition of "Roads," "Public Roads," Genwal was sent a letter on March 22, 1991, asking for additional information on that road."

Utah's approved State program at R614-300-112.400 requires that all persons who engage in and carry out any coal mining and reclamation operations will first obtain a permit from the Division. At R614-100-200, the definition of "Coal mining and reclamation operations" includes "\* \* \* all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage \* \* \*." Also at R614-100-200, "road" is defined as, "The term includes access and haul roads constructed, used, reconstructed, improved or maintained for use in coal exploration, or within the affected area of coal mining and reclamation operations \* \* \*." Finally, the definition of "affected area" at R614-100-200 includes "All areas covered by new or existing roads used to gain access to or for hauling coal from coal mining and reclamation operations; \* \* \*." Based on these regulatory requirements that are contained in the presently approved State program, OSM informed DOGM on March 5, 1991, that DOGM had a regulatory obligation to permit access and haul roads. This letter also informed DOGM that Utah's policy for exemption of public roads was unacceptable to OSM.

Mr. Braxton's response addresses the emergency rulemaking for the definitions of "road" and "public road" that include a proposed policy for determining exemptions to regulations. 30 CFR 732.17(g) states that no change to laws or regulations that make up the approved State program shall take effect for purposes of a State program until approved as an amendment by OSM. The emergency rulemaking regarding the definition of "roads/public roads" has not been approved by OSM. AFO notified DOGM on March 12, 1991, that the new rule could not be used until approved by OSM. OSM advised DOGM more than 5 years ago that a blanket exclusion of public roads was not acceptable. Since that time, OSM has rejected various proposals from DOGM that would continue such an exclusion. AFO notes that the latest policy statement is not substantially different from the one rejected by OSM by my letter of March 5, 1991.

The road cited in the TDN is known as the Crandall Canyon Road or Forest Service Road No. 50248. It runs in a westerly direction from State Highway 31 for approximately 1.5 miles. The road dead ends at the Genwal Mine.

The Forest Service Road was reconstructed under a Special Use Permit approved on May 21, 1981, for the purpose of coal haulage from the Genwal Coal Company Mine. The original 15 to 20 feet wide Forest Service Road was widened to a range of 35 to 50 feet. An 8-inch gravel sub-base was placed on the entire reconstructed road, and a 60 feet wide double lane bridge was built at the access point off of State Highway 31.

DOGM's response failed to address the use of the road or the purpose for which the road has been constructed and improved. Crandall Canyon Road provides access to and coal haulage from the Genwal minesite and is used almost exclusively for those purposes. In addition, the road was reconstructed for the sole purpose of hauling coal. The use and improvement of this road to gain access to and haul coal from the Genwal minesite meets the definitions of road, affected area, and coal mining and reclamation operations as found in the Utah approved program. The Crandall Canyon Road, as discussed above, constitutes coal mining and reclamation operations which must be permitted.

DOGM's failure to require the permitting of the road constitutes an arbitrary and capricious response and is, therefore, inappropriate.

Number 2 of 2:

Failure to prevent, to the extent possible, additional contributions of sediment to streamflow.

Your response states that until a decision is made on the permitting of the haul road, the mud flows into Huntington Creek are not within the regulatory domain of DOGM's program.

The mud flows from the haul road pose a serious environmental threat to Huntington Creek and are a direct result of the reconstruction and continued use of the road for access to and coal haulage from the Genwal Minesite. This condition is not being addressed, and the mud continues to flow into Huntington Creek with each snow melt or rainfall.

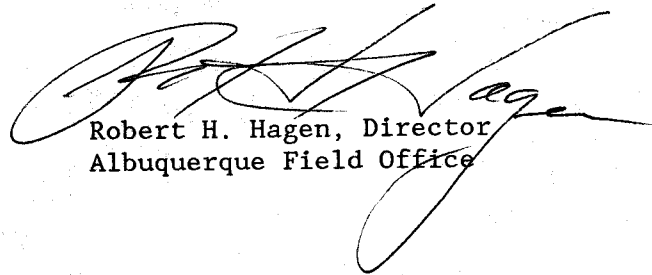
The Crandal Canyon Road constitutes coal mining and reclamation operations which must be permitted and regulated by DOGM. The failure of DOGM to address this alleged violation of a performance standard included in Utah's approved program constitutes an arbitrary and capricious response and is, therefore, inappropriate.

Dr. Dianne R. Nielson

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If you disagree with these findings, you may request an informal review in accordance with 30 CFR 842.11(6)(1)(iii)(A).

Sincerely,

A handwritten signature in black ink, appearing to read "R. H. Hagen", is written over the typed name and title.

Robert H. Hagen, Director  
Albuquerque Field Office